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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re M.B., a Person Coming Under the
Juvenile Court Law.

B208423

THE PEOPLE,

(Los Angeles County
Super. Ct. No. YJ31272)

Plaintiff and Respondent,

v.

M.B.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Stephanie M. Davis, Juvenile Court Referee. Affirmed as modified.

Jean Ballantine, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Susan Sullivan Pithey and James William Bilderback II, Deputy Attorneys General, for Plaintiff and Respondent.

M.B. appeals from the orders declaring wardship (Welf. & Inst. Code, § 602) and imposing a five year maximum period of confinement, after findings that he aided and abetted the commission of second degree robbery (Pen. Code, § 211). At the disposition proceeding, the juvenile court placed M.B. on probation, released him to the custody of his mother, and awarded him six days of custody credit.

On appeal, M.B. contends: (1) the evidence is insufficient to sustain a finding that he aided and abetted the commission of a second degree robbery; (2) the trial court erred by imposing a maximum period of confinement; and (3) the disposition order should be amended to reflect six days of custody credit instead of three days. The Attorney General concurs in the second and third contentions. We reject M.B.'s challenge to the sufficiency of the evidence, strike the maximum period of confinement, and amend the minute order to reflect six days of custody credit.

BACKGROUND

On December 29, 2007, Brianne Price and her friend were sitting outside of a Target retail store in Gardena. Price had finished making a phone call and was in the process of putting away her cell phone when D. and M.B. approached her.¹ D. grabbed Price's legs and pointed a gun directly at her. As he was doing this, M.B. "just stood there on the other side of him, looking around." D. said to Price: "Give me your phone." M.B. said nothing, but according to Price, he "stood there on the other side of [D.], looking around" as D. pointed the gun at her. Price gave D. the phone, and both D. and M.B. ran to the other end of the store's exterior. At this point, a third individual joined them. All three individuals looked around, one possibly dropped the phone and picked it up, and all three ran off together. Price's friend called the police, who arrived approximately 10 minutes later.

¹ Because the record does not disclose whether D. is a minor, we err on the side of caution and will refer to him as D.

Officer Chad Espinosa of the Gardena Police Department, along with his partner, responded to the call. After obtaining a description of D. and M.B., the officers located and detained D. and M.B. within 10 to 15 minutes. They were approximately two to three blocks away from the Target store. The officers found a gun and cell phone in D.'s possession. When Officer Espinosa asked M.B. for his name and where he was coming from, M.B. told Espinosa that he saw a schoolmate named "Cash" pull out a gun and rob someone at the Target store. M.B. also told Officer Espinosa that Cash went in one direction while D. and M.B. went in another direction.

At trial, Price testified that D. was the person who pointed the gun at her, and that M.B. was the person who stood on the other side of D. as D. robbed her.²

DISCUSSION

I. Sufficiency of Evidence

M.B. contends that sufficient evidence does not support the trial court's finding that he aided and abetted in the commission of second degree robbery.

In assessing a claim of insufficiency of evidence, the reviewing court's task is to "review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Johnson* (1980) 26 Cal.3d 557, 562.) The standard of review is the same in cases in which the prosecution relies mainly on circumstantial evidence. (*People v. Stanley* (1995) 10 Cal.4th 764, 792.) "[I]t is the jury, not the appellate court[,] which must be convinced of the defendant's guilt beyond a reasonable doubt. 'If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled

² On appeal, M.B. does not contend that he is not the person who stood on the other side of D. as D. robbed Price.

with a contrary finding does not warrant a reversal of the judgment.’ [Citations.]”
(*People v. Rodriguez* (1999) 20 Cal.4th 1, 11.)

“Whether a person has aided and abetted in the commission of a crime is a question of fact, and on appeal all conflicts in the evidence and attendant reasonable inferences are resolved in favor of the judgment.” (*In re Juan G.* (2003) 112 Cal.App.4th 1, 5 (*Juan G.*).

“All persons concerned in the commission of a crime . . . whether they directly commit the act constituting the offense, or aid and abet in its commission . . . are principals in any crime so committed.” (Pen. Code, § 31.) “Thus, a person who aids and abets a crime is guilty of that crime even if someone else committed some or all of the criminal acts.” (*People v. McCoy* (2001) 25 Cal.4th 1111, 1117.) To prove that a defendant has aided and abetted a crime, “the prosecution must show that the defendant acted ‘with knowledge of the criminal purpose of the perpetrator *and* with an intent or purpose either of committing, or of encouraging or facilitating commission of, the offense.” (*Id.* at p. 1118, quoting *People v. Beeman* (1984) 35 Cal.3d 547, 560.) “Among the factors which may be considered in determining aiding and abetting are: presence at the crime scene, companionship, and conduct before and after the offense.” (*Juan G., supra*, 112 Cal.App.4th at p. 5.)

M.B. contends that the prosecution put forth insufficient evidence to prove that he knew D. intended to rob Price, that he intended to encourage or facilitate the robbery, and that he actually encouraged or facilitated the robbery. M.B. claims his “[m]ere presence” at the scene of the crime was insufficient to establish liability.

Juan G., supra, 112 Cal.App.4th 1, and *In re Lynette G.* (1976) 54 Cal.App.3d 1087 (*Lynette G.*), both of which involved aider and abettor liability in the context of a robbery, are instructive.

In *Juan G., supra*, the defendant and another person, Q.D., approached the victim together. (112 Cal.App.4th at p. 3.) Q.D. pointed a knife at the victim and demanded money. While Q.D. was doing this, the defendant stood next to him. According to the victim, he felt threatened by the defendant, who stood close enough to touch him. After

Q.D. obtained the money, he and the defendant fled the scene together. (*Id.* at p. 4) Sometime later, the police found Q.D. and the defendant together and detained them. They found a knife on Q.D. (*Ibid.*) Although the defendant testified he had no knowledge Q.D. would rob the victim, the juvenile court found true the allegation that the defendant aided and abetted in the robbery. (*Ibid.*) The Court of Appeal affirmed, listing the following evidence as support for the juvenile court's finding: the defendant and Q.D. approached the victim together; the defendant stood beside Q.D. as Q.D. demanded the money; the victim felt intimidated by the defendant, who was standing close enough to touch him; and after the robbery, the defendant and Q.D. fled the scene together, and were found and arrested together. (*Juan G., supra*, 112 Cal.App.4th at pp. 6-7.)

In *Lynette G., supra*, 54 Cal.App.3d 1087, the assailant approached the victim and used a heavy object to strike the victim's head several times. While this was happening, the defendant and two other individuals were huddled together five feet away. (*Id.* at pp. 1090-1091.) The assailant took the victim's purse and shopping bag, and fled the scene along with the defendant and the two other individuals. A short while later, the police detained the assailant, the defendant, and the two other individuals, all of whom were exiting a nearby bowling alley together. (*Ibid.*) The Court of Appeal affirmed the juvenile court's finding that the defendant aided and abetted in a robbery, citing the following evidence in support: the defendant was at the scene of the crime; she fled the scene with the assailant after the crime; and was still in the company of the assailant shortly thereafter. (*Id.* at p. 1095.) The court explained that "[al]though flight, in and of itself, may be explained by a desire merely to disassociate oneself from an unexpected criminal activity, the trial court was not required to adopt this view; it could, reasonably, have concluded that had [the defendant's] flight been from fear of an unjustified charge of involvement, she also would have immediately disassociated herself from the other three girls." (*Ibid.*)

Here, as in *Juan G.* and *Lynette G.*, M.B. was near the assailant as the assailant approached the victim,³ stood by as the assailant proceeded to rob the victim, fled the scene with the assailant, and was found with the assailant shortly after the crime was committed. M.B. did not stay at the scene to wait for authorities, did not disassociate himself from D. after the robbery, and did not attempt to help the police investigate D.'s actions after the robbery. In fact, M.B. also tried to mislead the police about his involvement in the crime by falsely implicating a third person. Based on this evidence, the juvenile court could reasonably have concluded that M.B. knew D. intended to rob Price, that M.B. intended to encourage or facilitate the robbery, and that M.B. actually encouraged or facilitated the robbery.

M.B. argues that unlike the defendant in *Juan G.*, he did not stand close enough to Price to threaten her, and unlike the defendant in *Lynette G.*, he fled the scene because he simply wanted to avoid arrest regardless of his involvement. These distinctions are attempts to have this court reweigh the evidence. We decline to do so and accordingly affirm the juvenile court's finding that M.B. aided and abetted in second degree robbery.

II. Additional Claims of Error

During the disposition proceeding, the juvenile court released D.B. to the custody of his mother but nonetheless imposed a maximum confinement period of five years. M.B. contends this was error; the Attorney General concurs. We agree, and accordingly strike the maximum confinement period from the disposition order. (*In re Matthew A.* (2008) 165 Cal.App.4th 537, 541-542.)

Also during the disposition proceeding, the juvenile court granted M.B. six days of custody credit. The disposition order, however, reflects a credit of three days. M.B. requests that we amend the order to reflect six days of credit; the Attorney General concurs. We grant M.B.'s request and amend the order according. (*People v. Mitchell*

³ In fact, Price testified that M.B. "stood there on the other side of [D.], looking around" as D. pointed a gun at her.

(2001) 26 Cal.4th 181, 185 [“Courts may correct clerical errors at any time, and appellate courts . . . that have properly assumed jurisdiction of cases have ordered correction of abstracts of judgment that did not accurately reflect the oral judgments of sentencing courts”].)

DISPOSITION

The maximum confinement term set by the court is stricken and the disposition order is amended to reflect six days of custody credit. In all other respects, the orders of the juvenile court are affirmed.

NOT TO BE PUBLISHED.

TUCKER, J.*

We concur:

MALLANO, P. J.

ROTHSCHILD, J.

* Judge of the Orange County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.